

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings  
Under Chapter 7

CHARLES L. ROBINSON  
BARBARA E. ROBINSON

Case No. 99-41886

Debtor(s).

CARLA JEAN WALLACE

Plaintiff(s),

Adv. No. 99-4118

v.

CHARLES L. ROBINSON

Defendant(s).

OPINION

Plaintiff, Carla Wallace, filed this action seeking a determination that an amount owing to her from the military pension of her ex-husband, Charles Robinson ("debtor"), does not constitute an obligation that is dischargeable in the debtors' bankruptcy proceeding. Plaintiff's complaint alleges that, by reason of the parties' judgment of dissolution of marriage, she acquired an ownership interest in the debtor's pension benefits and, thus, no debt exists to be discharged and her right to payment should be unimpaired by the debtor's bankruptcy filing. In the alternative, plaintiff seeks a determination that the debtor's obligation to pay the pension benefits is

nondischargeable under either § 523(a)(5) or § 523(a)(15) of the Bankruptcy Code. See 11 U.S.C. § 523(a)(5), (a)(15).

At issue is the plaintiff's right to receive the sum of \$8,287.50,<sup>1</sup> which the state court determined was due to the plaintiff as an arrearage in pension benefits accruing while a previous state court order was on appeal. See Order of Williamson Co. Cir. Ct., entered Sept. 8, 1999, Ex. E to plaintiff's complaint. The state appellate court, in reversing the lower court's ruling that the plaintiff's right to pension benefits constituted "maintenance" terminating upon remarriage, specifically found that the award of pension benefits to the plaintiff in the parties' dissolution judgment constituted a division of marital property. See Order of Fifth Dist. App. Ct., entered Sept. 14, 1998, Ex. C to plaintiff's complaint.

At trial on the plaintiff's complaint in this Court, the parties agreed that to the extent the arrearage owed to the plaintiff from the debtor constitutes a property division "debt," the debt would not be nondischargeable under the factors set forth in § 523(a)(15).<sup>2</sup> See 11 U.S.C. § 523(a)(15)(A),(B).

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<sup>1</sup> The plaintiff's complaint described the amount owing as \$8,275.50, while the state court order set forth the amount as \$8,287.50. The Court makes no determination concerning the correct amount of the arrearage.

<sup>2</sup> Under § 523(a)(15), the nondischargeability of a property division debt depends on whether the debtor has the

The plaintiff, however, argues that based on the reasoning of In re Brown, 168 B.R. 331 (Bankr. N.D. Ill. 1994), she should be allowed to return to state court to seek reclamation of the monies owing to her. The plaintiff reasons that under the state court's judgment of dissolution, she acquired a portion of the entire corpus of the debtor's pension benefits and that she may reclaim the amount of the arrearage owing to her from the pension fund itself.

This Court makes no determination concerning whether the plaintiff has such a property interest in the debtor's pension benefits or whether she may reclaim the arrearage owing to her through adjustments in future pension benefits. However, the Court finds that the plaintiff may seek to recover such benefits by proceeding in state court, with the following caveats. First, to the extent the obligation owing to her is found to be a "debt" of the debtor rather than a property interest in the pension itself, the debt is not excepted from the debtor's discharge by reason of the factors set forth in § 523(a)(15). In addition, the debt cannot be characterized as alimony or maintenance so as to be excepted from discharge under §

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"ability to pay" such debt out of future income and on whether "discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a [former spouse]." See 11 U.S.C. § 523(a)(15)(A),(B).

523(a)(5).<sup>3</sup>

The Court notes that the parties agree the debtor has retained no portion of any benefits that were paid to him instead of the plaintiff during the time the state court order was on appeal. Thus, the plaintiff cannot attempt to reclaim the amount of the arrearage from the debtor himself under a theory of constructive trust. To this extent, the present case is distinguishable from Brown, in which the bankruptcy court determined that the ex-wife should file an action in state court "to reclaim her property which is currently being held hostage by the debtor [her ex-husband]." 168 B.R. at 336.

For the reasons stated, the Court finds that to the extent the debtor is found to owe a debt to the plaintiff for the arrearage amount determined by the state court, such debt is not excepted from the debtor's discharge under either § 523(a)(5) or (a)(15). The Court further finds that the plaintiff may, with the caveats stated herein, proceed in state court to seek reclamation of the arrearage amount from the pension fund itself.

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<sup>3</sup> At trial, the Court rejected the plaintiff's attempt to characterize the award of pension benefits as being in the nature of "maintenance" and thus nondischargeable under § 523(a)(5). The Court observed that the state appellate court specifically found the award of pension benefits to constitute a division of marital property.

SEE WRITTEN ORDER.

ENTERED: June 19, 2000

/s/ KENNETH J. MEYERS  
UNITED STATES BANKRUPTCY JUDGE